

NOTE: The following Conservation Easement Deed template is provided by the U.S. Army Corps of Engineers, Nashville District, as a standardized site protection document for compensatory mitigation sites within the Nashville District area of responsibility in Tennessee. The template must be completed with all exhibits attached before submitting it to the Corps for review. Any modifications to this template must be identified using track changes or other electronic comparison and explained in comments or an attached addendum. This template should not be construed or relied upon as legal advice or opinion on any specific facts or circumstances. (Version Date: March 29, 2018)

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made this _____ day of _____, 20____, by [full legal name(s) of granting landowner(s)], [address of granting landowner(s)] ("Grantor"), in favor of [full legal name of holder of the conservation easement], [address of holder] ("Holder"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property consisting of approximately _____ acres, located at [address] in _____ County, Tennessee (the "Protected Property"), as described in Deed Book [cite deed book and page numbers] in the records of the Register of Deeds for _____ County, Tennessee, and as more particularly described and depicted in **Exhibit A**, attached and incorporated into this Conservation Easement by reference.

[NOTE: Grantor must attach a legal description (i.e. metes and bounds) and survey of the Protected Property signed and stamped by a licensed surveyor in an exhibit identified as Exhibit A to the Conservation Easement. If the Protected Property consists of less than the whole property described, also include a separate, clearly identifiable legal description of the conservation area(s) and clearly delineate the Protected Property on the survey. In addition, Grantor must include on a scaled drawing of the areas subject to the Conservation Easement, the location and extent of all known, existing easements, property interests, rights-of-ways, utilities, drainage ditches, storm water facilities, cattle crossings, and structures.]

B. Holder, which has as its primary purpose [describe Holder's mission or purpose, i.e. to protect and preserve natural lands or resources in their natural, scenic, agricultural, forested, or open space condition or use], is a [describe Holder's legal status as either a public body legally empowered to hold an interest in real property or charitable corporation, association or trust], qualified as a tax-exempt non-profit organization under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, as amended, is authorized to hold this Conservation Easement pursuant to the Conservation Easement Act of 1981, Tenn. Code Ann. §§ 66-9-301, et seq., and has agreed to accept this grant.

C. The United States Army Corps of Engineers, Nashville District (the “Corps”) has approved use of the Protected Property for compensatory mitigation pursuant to and as defined in 33 C.F.R. Part 332.

[NOTE: Include the following recital for a mitigation bank.]

D. This Conservation Easement is granted pursuant to the Mitigation Banking Instrument (“MBI”) for the _____ Mitigation Bank, authorized by Department of the Army Permit No. _____ (“DA Permit”) issued by the Corps pursuant to section 404 of the Clean Water Act, by and between *[insert Bank Sponsor name]* (“Bank Sponsor”), Grantor *[if different from Bank Sponsor]*, and *[include name(s) of any agencies party to the MBI: the Corps, Region 4 of the U.S. Environmental Protection Agency (“USEPA”), the U.S. Fish and Wildlife Service (“USFWS”), the Natural Resources Conservation Service (“NRCS”), the Tennessee Valley Authority (“TVA”), the Tennessee Department of Environment and Conservation (“TDEC”), and the Tennessee Wildlife Resources Agency (“TWRA”)]*, referred to jointly as the Interagency Review Team (“IRT”), entered into concurrently with this Conservation Easement. The full MBI is incorporated into this Conservation Easement by this reference. A final, approved copy of the MBI and any amendments thereto approved by the IRT will be kept on file at the respective offices of the IRT members.

[NOTE: Include the following recital for an in-lieu fee program.]

D. This Conservation Easement is granted pursuant to an amendment to the _____ In-Lieu Fee (“ILF”) Program Instrument, hereinafter referred to as the _____ Project, authorized by Department of the Army Permit No. _____ (“DA Permit”) issued by the Corps pursuant to section 404 of the Clean Water Act, by and between *[insert In-Lieu Fee Program Sponsor name]* (“ILF Program Sponsor”) and *[include name(s) of any agencies party to the ILF Program Instrument: the Corps, Region 4 of the U.S. Environmental Protection Agency (“USEPA”), the U.S. Fish and Wildlife Service (“USFWS”), the Natural Resources Conservation Service (“NRCS”), the Tennessee Valley Authority (“TVA”), the Tennessee Department of Environment and Conservation (“TDEC”), and the Tennessee Wildlife Resources Agency (“TWRA”)]*, referred to jointly as the Interagency Review Team (“IRT”), approved concurrent with this Conservation Easement. The full ILF Program Instrument is incorporated into this Conservation Easement by reference. A final, approved copy of the ILF Program Instrument and any amendments thereto approved by the IRT will be kept on file at the respective offices of the IRT members.

[NOTE: Include the following recital for a permittee-responsible compensatory mitigation project.]

D. Grantor has agreed to make the Protected Property subject to the restrictions and prohibitions described in this Conservation Easement as a condition of DA Permit Number(s)

_____ (“DA Permit”), issued by the Corps pursuant to section 404 of the Clean Water Act, dated _____, incorporated into this Conservation Easement by reference.

E. The natural condition of the Protected Property has been or will be restored, established, enhanced, or preserved pursuant to the mitigation plan approved for the DA Permit (“Mitigation Plan”), incorporated into this Conservation Easement by reference, a copy of which will be kept on file at the offices of the Corps and [Grantor *or* Bank Sponsor *or* ILF Program Sponsor].

F. The Protected Property possesses natural resources of significant aquatic, ecological, environmental, aesthetic, educational, historical, recreational, and scientific value and importance to the Grantor and Holder, the people of _____ County, the State of Tennessee, and the United States. The Protected Property will provide high quality natural, restored, or enhanced habitat for wildlife and endangered, threatened, or rare species, including [*specify listed and sensitive plant and/or animal species*], and contain [*list habitats, native and/or non-native*]. These values include jurisdictional waters of the United States, as defined in 33 C.F.R. Part 328, adjacent uplands, native vegetation and wildlife. Individually and collectively, these natural resources comprise the “Conservation Values” of the Protected Property.

[NOTE: Include any additional recitals describing the conservation resources on site, including available information concerning the contribution they provide in terms of functions and services.]

G. The Conservation Values of the Protected Property are documented and included in or with the Mitigation Plan, which consists of [*reports, maps, aerial and on-site photographs, other details or documents contained in or with the approved compensatory mitigation plan*], and other documentation the Grantor and Holder agree provide, collectively, an accurate representation of the Protected Property at the time of the grant of this Conservation Easement, and which is intended to serve as an objective information baseline for the monitoring of and compliance with the terms of this Conservation Easement.

H. Grantor recognizes the Conservation Values of the Protected Property and agrees to the creation of these conservation-based limitations and affirmative obligations for the purpose of preserving and protecting the Conservation Values and natural condition of the Protected Property in perpetuity.

NOW, THEREFORE, in consideration of the above, pursuant to the laws of the State of Tennessee, including, but not limited to, Tennessee Code Annotated §§ 66-9-301, *et seq.*, Grantor hereby grants and conveys to Holder a Conservation Easement in perpetuity over the Protected Property consisting of the following:

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

1. Purpose. The purpose of this Conservation Easement is to ensure the Protected Property will be retained forever in its natural, restored, or enhanced condition, as contemplated by the Mitigation Plan, and to prevent any use of the Protected Property that will impair or interfere with the Conservation Values of the Protected Property. Grantor intends that the grant of this Conservation Easement will confine the use of the Protected Property to only those activities and uses that are consistent with the purpose of this Conservation Easement and will be implemented consistent with the DA Permit and Mitigation Plan.

2. Holder's Rights. To accomplish the purpose of this Conservation Easement, Grantor hereby grants and conveys the following rights to Holder:

(a) To preserve and protect the Conservation Values of the Protected Property;

(b) To conserve and protect all mineral, air, water and groundwater rights necessary to protect and sustain the biological resources of the Protected Property;

(c) To enter and go upon the Protected Property at reasonable times to inspect, monitor compliance with, and otherwise enforce the terms of this Conservation Easement at Holder's sole discretion, provided that such entry will not unreasonably impair or interfere with Grantor's authorized use and quiet enjoyment of the Protected Property; and

(d) To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any act, failure to act, use or activity that is inconsistent with the purpose of this Conservation Easement.

3. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, except as specifically provided in the Mitigation Plan, the following activities and uses are expressly prohibited in, on, over, or under the Protected Property:

(a) Commercial, industrial, residential, or institutional structures, uses, or activities.

(b) Construction, reconstruction, expansion, location, relocation, alteration, installation or placement of any building, roads, utility lines or facilities, trails, walkways, pavement, benches, equipment storage, billboard or advertising sign, or any other structure or improvement of any kind, or any additions or improvements to existing structures.

(c) Filling, dumping, excavating, mining, drilling, grading, leveling, disturbing, removing, exploring or extracting minerals, loam, soil, peat, sand, gravel, rocks, gas, oil, or other material on or below the surface of the Protected Property, or any alteration to the surface or general topography of the Protected Property or any portion of the Protected Property,

including any discharges of dredged or fill material, or granting or authorizing surface entry to the Protected Property for any of these purposes.

(d) Draining, ditching, diking, dredging, channelizing, changing the grade or elevation, water withdrawals, underground injection wells, manipulating, impounding, or altering of any natural water course, body of water, or water circulation on the Protected Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

(e) The transfer, encumbrance, sale, lease, or other conveyance of the mineral, air or water rights for the Protected Property and any portion thereof separate from the surface rights, changing the place or purpose of use of the water rights, abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Protected Property, including, but not limited to, (i) riparian water rights, (ii) appropriative water rights, (iii) rights to waters secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Protected Property, and (iv) any water from wells that exist or may be constructed in the future on the Protected Property.

(f) The placement, storage, accumulation, dumping, depositing, abandoning, discharging, disposing or releasing of any gaseous, liquid, solid, or hazardous waste substance, yard waste, soil, ashes, trash, rubbish, refuse, grass clippings, cuttings, bio-solids, waste materials or debris of whatever nature, whether temporarily or permanently, on, in, over, or underground or into surface or ground water.

(g) The planting, introduction, or dispersal of non-native or exotic animal or plant species.

(h) Use of herbicides, insecticides, biocides, fungicides, pesticides, rodenticides, fertilizers or other agricultural chemicals, weed abatement activities, incompatible fire protection activities, or other biological controls.

(i) The mowing, cutting, clearing, burning, pruning, removal of any kind, disturbance, destruction, or collection of any natural trees, shrubs, or other vegetation, except for:

- (1) safety purposes;
- (2) control in accordance with accepted scientific forestry management practices for the treatment of diseased or dead vegetation;
- (3) control of non-native species and noxious weeds; or
- (4) scientific or natural study.

(j) Agricultural or grazing activities of any kind, except for vegetation management activities as specifically provided in the Mitigation Plan.

(k) Use of all-terrain vehicles (ATVs), dirt bikes, motorcycles, off-road vehicles, or other motorized vehicle of any kind, except on existing roads and trails as necessary to manage the Protected Property.

(l) Any legal or de facto division, subdivision, partitioning, or any other division of the Protected Property.

(m) Engaging in any use or activity that may violate or fail to comply with relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Protected Property, or the use or activity in question.

[NOTE: Insert additional restrictions as appropriate for the particular Protected Property considering the Mitigation Plan and Conservation Values.]

4. Grantor's Duties. Grantor will undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Protected Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor will undertake all necessary actions to perfect and defend Holder's rights under this Conservation Easement.

5. Reserved Rights. Grantor reserves to itself, its representatives, heirs, successors and assigns, all rights accruing from Grantor's ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not prohibited or limited by, and are consistent with the purpose of, this Conservation Easement. Grantor expressly reserves the following rights:

[NOTE: You may insert reserved rights as appropriate for the particular Protected Property and its Conservation Values. The following reserved rights are provided as examples.]

(a) Within the terms and conditions of their permits, agreements and the law, Grantor and any holders of easements or other property rights for the operation and maintenance of pre-existing or project-related structures or infrastructure, such as roads, trails, walkways, utilities, drainage ditches, or stormwater facilities that are present on, over, or under the Protected Property, reserve the right to continue with such operation and maintenance. All pre-existing or approved project-related structures and infrastructure are shown on the accompanying plat map attached to this Conservation Easement and disclosed in the Property Assessment and Warranty attached as an exhibit to the [Mitigation Plan *or* MBI].

(b) Landscaping by the Grantor to prevent severe erosion or damage to the Protected Property or portions thereof, or significant detriment to existing or permitted uses, is

allowed, provided that such landscaping is generally consistent with preserving the natural condition of the Protected Property.

(c) The right to use the Protected Property for lawful passive, non-commercial recreational uses, including hunting, fishing, non-motorized boating, primitive camping, hiking, biking, horseback riding, picnics, social events, nature interpretation and other educational programs, in accordance with the laws and regulations of the State of Tennessee and Tennessee Wildlife Resources Agency ("TWRA") or its successor agency, provided that such activities are consistent with the continuing natural condition of the Protected Property and do not adversely impact the Conservation Values of the Protected Property.

(d) Signs approved by the Corps in the Mitigation Plan may be erected and remain on-site in legible condition, including boundary markers identifying the area as a protected compensatory mitigation property, no trespassing signs, signs identifying the Grantor as the owner of the Protected Property, or other signage conveying information on the restricted uses of the Protected Property.

(e) Grantor reserves the right to perform [*or to allow* [Bank Sponsor *or* ILF Program Sponsor *or* [name of other third-party]] to perform] restoration, enhancement, preservation or other mitigation activities in accordance with the Mitigation Plan and as required by the terms of the DA Permit, including the use of all equipment necessary to successfully complete any mitigation requirements contained therein.

6. Holder's Remedies.

(a) If Holder determines that a violation of this Conservation Easement has occurred or is threatened, Holder will give written notice to the Grantor of such violation and demand corrective action sufficient to cure the violation. Where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, Holder will demand corrective action sufficient to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by the Holder. In addition to the notice provided to the Grantor, Holder will provide concurrent written notice to the Corps and any other third-party beneficiaries of any non-compliance with the terms and conditions of this Conservation Easement.

(b) If Grantor fails to cure the violation within thirty (30) days after receipt of a notice of violation, or, under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing said violation within the thirty (30) day period, or fails to continue diligently to completely cure such violation, Holder may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: (i) to recover any damages to which Holder may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Protected Property, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values;

(ii) to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; (iii) to pursue any other legal or equitable relief, including but not limited to, the restoration of the Protected Property to the condition in which it existed prior to any violation or injury; (iv) or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Holder may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

(c) If Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Holder may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire. Holder's rights under this section apply equally to actual or threatened violations of this Conservation Easement. Holder will notify the Grantor and the Corps within thirty (30) days of such an occurrence.

(d) Grantor agrees that Holder's remedies at law for any violation of this Conservation Easement are inadequate and that Holder will be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Holder may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Holder's enforcement rights and remedies granted in this Conservation Easement are cumulative and in addition to all enforcement rights and remedies available to Holder now or hereafter existing at law or in equity. The failure of Holder to discover a breach or violation or to take immediate legal action will not bar Holder from taking such action at a later time.

7. Costs of Enforcement. Grantor will bear any and all costs incurred by the Holder, where Holder is the prevailing party, to enforce the terms and conditions of this Conservation Easement against the Grantor, including, but not limited to, the costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by the violation or breach of the terms of this Conservation Easement.

8. Third-Party Beneficiaries. Grantor and Holder acknowledge that the Corps [and *include any other federal or state agencies that will be third-party beneficiaries, as applicable*] [(the "*Third-Party Beneficiaries*") is [or are] a third-party beneficiary[ies] with the discretionary right to enforce all provisions of this Conservation Easement and with all rights and remedies conveyed to the Holder under this Conservation Easement. These enforcement rights are in addition to, and do not limit, any rights available to the Corps under the DA Permit, any other applicable permit or certification, or other provisions of law or equity. The Corps reserves the right to be represented by the United States Department of Justice in any state or federal court action and to remove a legal action affecting jurisdictional waters of the United States or federally-listed species to the United States District Court of the district in which the Protected Property lies.

9. Access. Grantor conveys to the Corps [*or Third-Party Beneficiaries*], and its [*or their*] successors, assigns, agents, representatives, invitees, and licensees, the right to access, enter and go upon any portions of the Protected Property to take actions necessary to verify or monitor compliance with the terms and conditions of this Conservation Easement. This Conservation Easement does not convey a right of access or entry to the general public to any portion of the Protected Property.

10. Costs of Ownership. Grantor retains all responsibilities and will bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement. Grantor agrees that neither Holder nor the Corps [*or Third-Party Beneficiaries*] has [*or have*] any duty or responsibility for the operation, upkeep or maintenance of the Protected Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public, or any third parties from risks related to conditions on the Protected Property.

11. Taxes and Liens. Grantor will pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority, including any taxes imposed on or incurred as a result of this Conservation Easement, and will furnish Holder with satisfactory evidence of payment upon request. Grantor will keep the Protected Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement in a recorded document approved by the Corps), including liens arising out of work performed, materials furnished, or obligations incurred by the Grantor.

12. Liability and Indemnification. Grantor will hold harmless, protect, indemnify and defend Holder, the Corps [*or Third-Party Beneficiaries*], and their members, directors, officers, employees, agents, representatives and contractors, and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, orders, liens or judgments, including reasonable attorneys' fees and experts' fees, arising from or in any way connected with the existence or administration of this Conservation Easement, or other matter related to or occurring on or about the Protected Property, unless Holder, the Corps [*or Third-Party Beneficiaries*], or any of their agents have committed a deliberate act that is determined by a court to be the sole cause of the injury or damage.

13. Warranty of Title. Grantor represents and warrants that Grantor is the sole owner in fee simple of the Protected Property and has the right to grant and convey this Conservation Easement. Grantor also represents and warrants that, except as specifically disclosed to the Corps in the Property Assessment and Warranty dated ____, attached as an exhibit to the [Mitigation Plan *or* MBI], and incorporated into this Conservation Easement by reference, the

Protected Property is free and clear of any and all liens, loans, claims, restrictions, easements, encumbrances or other interests that may conflict or are inconsistent with this Conservation Easement. Grantor has identified all other parties that hold any interest in the Protected Property and notified such parties of Grantor's intent to grant this Conservation Easement. *[Add the following sentence, if applicable: Any mortgages, conservation, utility and right-of-way easements of record, liens, encumbrances, or other interests in the Protected Property that may conflict with this Conservation Easement have been expressly subordinated to this Conservation Easement by recorded document attached as **Exhibit B.**]* If any easement, right, interest, or lease on or to the Protected Property not listed in the Property Assessment and Warranty and prior in time and recording to this Conservation Easement, or unrecorded, is exercised in such a manner that conflicts with or voids the uses of the Protected Property set out in this Conservation Easement, then the Grantor will be responsible for providing alternative compensatory mitigation in such amounts and of such resource type and function as the Corps or any enforcer of this Conservation Easement determines in accordance with the DA Permit.

14. Additional Interests. Grantor will not grant any additional easements, rights of way, or other interests in the Protected Property, other than a security interest expressly subordinated to this Conservation Easement, nor will Grantor grant, transfer, abandon or relinquish any mineral, air, or water right or any water associated with the Protected Property, without first obtaining the written consent of Holder and the Corps. Such consent may be withheld if Holder or the Corps determines that the proposed interest or transfer is inconsistent with the purpose of this Conservation Easement or may impair or interfere with the Conservation Values of the Protected Property. Grantor will provide a copy of any approved recorded or unrecorded grant or transfer document to Holder and the Corps. This provision does not prohibit transfer of a fee or leasehold interest in the Protected Property that is subject to this Conservation Easement and complies with Section 22.

15. Environmental Matters.

(a) Grantor represents and warrants that it has no knowledge or notice of a material or threatened release of hazardous substances or wastes or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Protected Property, or transported to or from or affecting the Protected Property, or the Protected Property's use as a landfill or dump, in violation of federal, state or local laws, statutes, regulations or ordinances. The term "hazardous materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901, *et seq.*, the Hazardous Materials Transportation Act ("HTA"), 49 U.S.C. §§ 5101, *et seq.*, and in the regulations adopted and publications promulgated pursuant to them, or any other applicable environmental laws now in effect or enacted after the date of this Conservation Easement. The term "environmental laws" includes, without limitation, CERCLA, RCRA, HTA, and any other

federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment, or hazardous materials. Grantor represents, warrants, and covenants to Holder and the Corps [*or Third-Party Beneficiaries*] that all activities upon and use of the Protected Property by Grantor, its agents, employees, invitees and contractors will comply with all environmental laws.

(b) Without limiting the obligations of Grantor under Section 12, Grantor hereby releases and agrees to indemnify, protect and hold harmless Holder, the Corps [*or Third-Party Beneficiaries*], and any of their agents from and against all litigation, claims, demands, penalties and damages, including reasonable attorneys' and experts' fees, arising from or connected with any actual or alleged release of hazardous waste, presence of underground storage tanks, use of the Protected Property as a landfill or dump, or violation of or failure to comply with any federal, state or local environmental laws associated with the Protected Property. Notwithstanding the foregoing, Grantor has no obligation to defend or indemnify Holder or the Corps [*or Third-Party Beneficiaries*] against litigation, claims, demands, penalties, damages or attorneys' fees arising out of or connected to releases of hazardous substances or wastes caused by Holder, the Corps [*or Third-Party Beneficiaries*], or any of their agents.

16. Notice of Legal Action. Grantor will provide Holder and the Corps [*or Third-Party Beneficiaries*] written notice of any legal action affecting this Conservation Easement, including, but not limited to, foreclosure proceedings, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation proceedings, and the exercise of the power of eminent domain. For any legal action that might result in this Conservation Easement being voided or modified, such notice will be provided at least sixty (60) days before such action would be taken. This Conservation Easement is intended to survive any legal actions affecting the Protected Property.

17. Eminent Domain. If the Protected Property is taken in whole or in part by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, Grantor and Holder will act jointly to recover the full value of the interests in the Protected Property subject to the taking or in lieu of purchase and all direct or incidental damages resulting therefrom. This Conservation Easement constitutes a real property interest immediately vested in Holder. In the event that all or a portion of this Protected Property is sold, exchanged, or involuntarily converted following the extinguishment or the exercise of eminent domain, Holder will be entitled to the fair market value of this Conservation Easement. The consequential loss in the value of the Protected Property is the cost of the replacement of the conservation functions, services and value of the aquatic and terrestrial resources on the Protected Property with other property in the same watershed. Holder will use all such proceeds in a manner consistent with the DA Permit and this Conservation Easement.

18. Duration. This Conservation Easement will constitute a servitude running in perpetuity with the Protected Property regardless of ownership or use, and will be binding on and

inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, representatives, devisees, assigns, lessees, or other occupiers and users, as the case may be, as long as said party has any interest in any part of the Protected Property. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Protected Property, except that liability for acts, omissions or breaches occurring prior to transfer will survive transfer.

19. Funding. Endowment funding for the perpetual management, maintenance and monitoring of the Protected Property is specified in and governed by the Mitigation Plan for the DA Permit [*or* MBI].

20. Filing. Grantor will record this Conservation Easement in the official land records of the Register of Deeds of _____ County, Tennessee, as soon as practicable after execution of the instrument, and Holder may re-record the Conservation Easement at any time as the Holder deems necessary to preserve its rights in this Conservation Easement. Grantor will provide the Holder and the Corps with a copy of the recorded instrument within thirty (30) days of any recordation.

21. Amendment. This Conservation Easement may be amended or modified only by the written agreement of Grantor and Holder and with the written approval of the Corps [*or Third-Party Beneficiaries*]. The party seeking to amend or modify the Conservation Easement must give written notice to the Corps of the intent to amend or modify the Conservation Easement at least sixty (60) days prior to the effective date of the amendment. Any such amendment will be recorded in the official land records of county in which the Protected Property is located, will be consistent with the purpose of this Conservation Easement, will not affect its perpetual duration, and will not permit impairment of the Conservation Values of the Protected Property. The Corps has no obligation to allow any amendment. Amendments to the Conservation Easement for the purpose of proposing additional impacts are not favored and will be considered only in rare circumstances following Corps regulations, policy, and procedures. Additional compensatory mitigation may be required for impacts resulting from the amendment.

22. Subsequent Transfers or Conveyances by Grantor. Grantor agrees to incorporate the terms and conditions of this Conservation Easement by reference in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Protected Property, including, without limitation, a leasehold or possessory interest in any portion of the Protected Property. Grantor further agrees to give written notice to Holder and the Corps [*or Third-Party Beneficiaries*] of the intent to transfer or convey title or any interest in or on the Protected Property at least sixty (60) days prior to the date of such transfer. The notice will include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the portion of the Protected Property affected by the transfer. The new transferee will provide the Corps a letter acknowledging the terms and conditions of the [Mitigation Plan *or* MBI] and recorded Conservation Easement. [*Add for ILF projects or*

mitigation banks: No further mitigation credits from the [_____ Project *or* _____ Mitigation Bank] will be sold or credited toward fulfilling mitigation requirements pending review and approval of the transfer by the Corps.] Holder and the Corps [*or Third-Party Beneficiaries*] have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions, and restrictions of this Conservation Easement, including the exhibits and documents incorporated by reference in it. The failure of Grantor to perform any act provided in this section will not impair the validity of this Conservation Easement or limit its enforceability in any way.

23. Assignment or Transfer by Holder. Holder may assign or transfer the benefits of this Conservation Easement only upon the following conditions: (i) Holder must require that the purpose of this Conservation Easement continues to be carried out; (ii) the assignee or transferee, at the time of assignment or transfer, must be qualified and authorized to acquire and hold conservation easements under Tennessee Code Annotated §§ 66-9-301, *et seq.*, and the laws of the United States; (iii) Holder must give Grantor and the Corps at least sixty (60) days prior written notice of the proposed assignment or transfer; and (iv) the assignment or transfer of the Conservation Easement is subject to the written approval of the Corps. Holder will require the assignee or transferee to record the assignment in the land records of the county in which the Protected Property is located. As a condition of such assignment or transfer, the assignee or transferee must agree in writing that the conservation purpose this Conservation Easement is intended to advance will continue to be fulfilled. The failure of Holder to perform any act provided in this section will not impair the validity of this Conservation Easement or limit its enforceability in any way. In the event of the termination of Holder's existence without advance notice, the rights and obligations of the Holder will, without any further action on the part of any entity, be deemed assigned or transferred to an entity approved by the Corps or through judicial proceedings in a court of competent jurisdiction.

24. Merger. The doctrine of merger will not operate to extinguish this Conservation Easement if the Conservation Easement and Protected Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement, then, unless Grantor, Holder and the Corps [*or Third-Party Beneficiaries*] otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement will be recorded against the Protected Property.

25. Other Permits. Any permit application, or request for certification or modification, which may affect the Protected Property made to any governmental entity with authority over waters of the United States must expressly reference and include a copy, with the recording stamp, of the terms of this Conservation Easement.

26. Notices. Any notices, demands, requests, consent, approval, or other communication required under this Conservation Easement will be sent in writing by registered or certified mail to the following addresses or to such addresses as hereafter may be specified by written notice. Copies of a communication sent to one party must be sent to all other parties.

Notice will be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier, or, in the case of delivery by first-class mail, three (3) days after deposit into the United States mail.

TO GRANTOR: *[Name, address, attention block]*

TO HOLDER: *[Name, address, attention block]*

TO CORPS: U.S. Army Corps of Engineers
 Attn: Regulatory Division Chief
 3701 Bell Road
 Nashville, TN 37214

[NOTE: Add contact information for any other federal or state agencies that are Third-Party Beneficiaries to this Conservation Easement.]

27. No Waiver. Enforcement of the terms of this Conservation Easement is at the discretion of Holder and the Corps *[or Third-Party Beneficiaries]*. The failure, delay, omission, or forbearance of Holder or the Corps *[or Third-Party Beneficiaries]*, for any reason whatsoever, to exercise any right or remedy under this Conservation Easement in the event of any breach or violation of any term of this Conservation Easement will not be construed a waiver or estoppel of such term, any subsequent breach of the same or any other term of this Conservation Easement, or impair any rights or remedies of Holder or the Corps *[or Third-Party Beneficiaries]* under this Conservation Easement.

28. Severability. Should any portion of this Conservation Easement or the application thereof to any person or circumstance be found invalid or unenforceable, the remainder of the provisions of this instrument, or application of such provisions to persons or circumstances other than those as to which they are found to be invalid or unenforceable, as the case may be, will continue in full force and effect.

29. Extinguishment. If circumstances arise in the future that render the preservation of Conservation Values or the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement may be terminated or extinguished, in whole or in part, by mutual agreement of Grantor and Holder and with the written approval of the Corps, or by judicial proceedings in a court of competent jurisdiction.

30. Controlling Law. The interpretation and performance of this Conservation Easement will be governed by the laws of the United States and the State of Tennessee, disregarding the conflicts of law principles of the state.

31. Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement will be liberally construed to accomplish the purpose of this

Conservation Easement and the policy and purpose of Tennessee Code Annotated §§ 66-9-301, *et seq.* If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid will be favored over any interpretation that would render it invalid.

32. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and will have no effect upon its construction or interpretation.

33. Jurisdictional Waters. The Protected Property will remain protected even though it may later be determined, through case law decisions or otherwise, not to have jurisdictional waters of the United States.

34. Entire Agreement. This instrument, including its exhibits and documents incorporated by reference in the instrument, together set forth the entire agreement of Grantor, Holder, and the Corps [*or Third-Party Beneficiaries*] with respect to the Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements of such parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement will be valid or binding unless contained in an amendment in accordance with Section 21.

35. General Disclaimer. The Corps, its employees, agents, and assigns disclaim and will not be held responsible for Holder's or Grantor's negligent acts or omissions or Holder's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Conservation Easement, or violations of any federal, state, or local laws, including all environmental laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantor or Holder may be subject to or incur relating to the Protected Property.

36. Exhibits. The following exhibits referenced in this Conservation Easement are attached to and incorporated by reference herein:

Exhibit A – Legal Description and Survey of Protected Property
Exhibit B (*if applicable*) – Consent and Subordination Agreement(s)

TO HAVE AND TO HOLD this Conservation Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of the Holder, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement as of the day, month and year first above written.

GRANTOR:

[Notarization required.]

[Include Holder's certificate or acknowledgement of acceptance here, i.e. "Holder, _____, does hereby accept the above Conservation Easement Deed."]

HOLDER:

[Notarization required.]